

***United States Court of Appeals
for the
District of Columbia Circuit***



**TRANSCRIPT OF
RECORD**

In The United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

NO. 13,119

*United States Court of Appeals
For the
District of Columbia Circuit*

FILED OCT 27 1958

357

Joseph W. Stewart
CLERK

HARRY C. WILLIAMS,
Appellant,

v.

UNITED STATES OF AMERICA,
Appellee.

**APPEAL FROM THE UNITED STATES DISTRICT
COURT FOR THE DISTRICT OF COLUMBIA**

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JOINT APPENDIX

[Filed July 18, 1955]

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

Holding a Criminal Term

Grand Jury Impanelled June 2, 1955, Sworn in on June 7, 1955

The United States of America	:	Criminal No. 650-'55
vs.	:	Grand Jury No. 762-55
Harry C. Williams	:	Housebreaking and Larceny (22 D.C.C. 1801, 2201, 2202)

The Grand Jury charges:

On or about May 21, 1955, within the District of Columbia, Harry C. Williams entered the dwelling of Samuel M. Becker and Judy Becker, with intent to steal property of another.

SECOND COUNT:

On or about May 21, 1955, within the District of Columbia, Harry C. Williams stole the property of Samuel M. Becker and Judy Becker, of the value of about \$176.00, consisting of the following: two wallets, each of the value of \$15.00, one key case, of the value of \$1.00, \$130.00 in money, property of Samuel M. Becker; one wallet, of the value of \$5.00, \$10.00 in money, property of Judy Becker.

/s/ Leo A. Rover

Attorney of the United States in
and for the District of Columbia

A TRUE BILL:

/s/ Vernon M. Herring
Foreman.

[Filed July 22, 1955]

PLEA OF DEFENDANT

On this 22nd day of July, 1955, the defendant Harry C. Williams, appearing in proper person and, being arraigned in Open Court upon the indictment, the substance of the charge being stated to him, pleads not guilty thereto.

The defendant is remanded to the D. C. Jail.

By direction of

CHARLES F. MC LAUGHLIN

Presiding Judge
Criminal Court #1

Present:

United States Attorney

HARRY M. HULL, Clerk

By EDWARD FENNALL

Assistant United States Attorney

DAVID SPATZER, Official Reporter

[Filed July 8, 1955]

MOTION TO SUPPRESS EVIDENCE

Comes now the defendant, by his attorney, and respectfully moves this Honorable Court to suppress the evidence obtained in the above-entitled cause for the following reasons:

1. That the police officers went to his home, and the home of his Aunt, with whom he resides, at 1627 Lamont Street, Northwest, and searched said premises without a warrant or any legal authority so to do; that certain evidence was removed from said premises without any warrant in violation of the defendant's constitutional rights.

/s/ Saul G. Lichtenberg
Attorney for Defendant
National Press Building
Washington, D. C.

Receipt of the above motion and affidavit acknowledged this 8th day of December, 1955.

BY: /s/ H. H. Titus, Jr.
Asst. U. S. Attorney

AFFIDAVIT

District of Columbia ss:

Mazie Berry being first duly sworn according to law on oath deposes and says: that she is a resident of the District of Columbia, and is a sister of the defendant, in the above-entitled cause, Harry C. Williams; that she resides at 1627 Lamont Street, N. W., that on the _____ day of _____ 1955, police officers came to her

home without a warrant and searched the premises and removed some evidence from a closet in violation of her and the defendant's constitutional rights.

/s/ Mazie Berry

Subscribed and sworn to before me this 7th day of December, 1955.

/s/ Mary B. Chaney, Notary Public, D.C.

[Filed December 8, 1955]

On this 8th day of December, 1955, came the attorney of the United States, the defendant in proper person and by his attorney, Saul G. Lichtenberg, Esquire; whereupon the defendant's motion to suppress evidence coming on to be heard, after argument by counsel, is by the Court denied.

The defendant is remanded to the District of Columbia Jail.

Present:

United States Attorney

By Harold Titus
Assistant United States Attorney

Robert L. Thiel, Official Reporter

By direction of

Joseph C. McGarraghy

Presiding Judge
Criminal Court #1

HARRY M. HULL, Clerk

[Filed December 8, 1955]

On this 8th day of December, 1955, came the attorney of the United States; the defendant in proper person and by his attorney Saul G. Lichtenberg, Esquire; whereupon the jurors of the regular Petit Jury panel serving in Criminal Court No. 1, being called, are sworn upon their voir dire; and thereupon comes a jury of good and lawful persons of the District of Columbia, to-wit:

- | | |
|--------------------------|-----------------------|
| 1. Richard L. Allen | 7. William J. Morris |
| 2. Hortense G. Sewell | 8. Louis Rosenblum |
| 3. Alys L. Brennan | 9. Marjorie C. Owens |
| 4. Aquilla S. Crouch | 10. Mary E. Kilby |
| 5. Margaret A. Eggleston | 11. Katie S. Kitrell |
| 6. Elli Olsoni | 12. Mary L. McCrimmon |

who are sworn to well and truly try the issue joined herein; whereupon the Court

directs the calling of two additional persons to serve as alternate jurors and Nettie M. Speed and Jasper Stamps being called, are sworn to well and truly try the issue joined herein; and thereupon after hearing the evidence and the instructions of the Court, the two alternate jurors are discharged from further consideration in this case. The jury retires to consider their verdict. The jury returns into Court and upon their oath say that the defendant is guilty as indicted and thereupon each and every member of the jury is asked if that is his or her verdict and each and every member thereof says that the defendant is guilty as indicted. The case is referred to the Probation Officer of the Court and the defendant is remanded to the District of Columbia Jail.

By direction of

JOSEPH C. MC GARRAGHY

Present:

United States Attorney

By Harold Titus

Assistant United States Attorney

Robert I. Thiel, Official Reporter

Presiding Judge
Criminal Court #1

HARRY M. HULL, Clerk

[Filed December 27, 1955]

JUDGMENT AND COMMITMENT

On this 23rd day of December, 1955, came the attorney for the Government and the defendant appeared in person and by counsel, Saul G. Lichtenberg, Esquire.

IT IS ADJUDGED that the defendant has been convicted upon his plea of Guilty of the offense of Housebreaking and Larceny, as charged, and the Court having asked the defendant whether he has anything to say why judgment should not be pronounced, and no sufficient cause to the contrary being shown or appearing to the COURT,

IT IS ADJUDGED that the defendant is guilty as charged and convicted.

IT IS ADJUDGED that the defendant is hereby committed to the custody of the Attorney General or his authorized representative for imprisonment for a period of

Three (3) years to Ten (10) years.

IT IS ORDERED that the Clerk deliver a certified copy of this judgment and commitment to the United States Marshal or other qualified officer and that the copy copy serve as the commitment of the defendant.

/s/ JOSEPH C. MC GARRAGHY
United States District Judge.

[Filed December 13, 1955]

MOTION FOR A NEW TRIAL

Comes now the defendant, by his attorney, and respectfully moves the Honorable Court for a new trial in the above-entitled cause for the following reasons:

1. That the verdict was contrary to the evidence.
2. That the verdict was contrary to the weight of the evidence.
3. That the Court erred in not granting the defendant a hearing on a motion to suppress.
4. And for such other and further reasons as may be argued at the hearing of this motion.

/s/ Saul G. Lichtenberg
Attorney for Defendant

This is to certify that a copy of the above motion was mailed to the office of the U. S. Attorney, U. S. Court House, Washington, D. C. this 12th day of December, 1955, first class postage prepaid.

/s/ Saul G. Lichtenberg

[Filed December 21, 1955]

On this 21st day of December, 1955, came the attorney of the United States, the defendant in proper person and by his attorney, Saul G. Lichtenberg, Esquire; whereupon the defendant's motion for a new trial, coming on to be heard, after argument by counsel, is by the Court denied.

The defendant is remanded to the District of Columbia Jail.

Present:

United States Attorney
by Harold Titus
Assistant United States Attorney

By direction of

JOSEPH C. MCGARRAGHY
Presiding Judge
Criminal Court #1

Robert I. Thiel, Official Reporter

HARRY M. HULL, Clerk

[Filed August 18, 1958]

**UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT**

NO. 13,119

Harry C. Williams, Appellant,

APRIL TERM, 1958

v.

District Court Criminal
No. 650-55.United States of America,
Appellee.

Before: Edgerton, Chief Judge, and Madden, Judge
of the United States Court of Claims,
sitting by designation pursuant to Section
291(a), Title 28 U. S. Code, and Fahy,
Circuit Judge, in Chambers.

ORDER

On consideration of appellant's memorandum in support of motion for rehearing on petition for leave to prosecute an appeal in forma pauperis, and of appellee's opposition, it is

ORDERED by the Court that appellant be, and he is hereby, allowed to prosecute his appeal without prepayment of costs, and it is

FURTHER ORDERED by the Court that the stenographic transcript of the proceedings in the District Court be furnished to appellant at the expense of the United States.

Per Curiam.

Dated: August 15, 1958

CRIMINAL NO. 650-55

Government Exhibit Number 1 - 1 Large button attached to piece of cardboard
Returned to H. Titus 12-8-55. Marked for identification December 8, 1955 -
Received into Evidence December 8, 1955 - Witness: Slattery

EXCERPTS FROM TRANSCRIPT OF PROCEEDINGS

1 THE UNITED STATES

v.

HARRY C. WILLIAMS

:

:

:

Criminal No. 650-55

Thursday, December 8, 1955

The above-entitled case came on for trial before the Honorable Joseph C. McGarraghy, Judge, at 10:00 o'clock, a.m.

APPEARANCES:

On behalf of the United States:

Harold Titus, Esquire.

On behalf of the defendant:

Saul G. Lichtenberg, Esquire.

2 PROCEEDINGS

MR. TITUS: The Government is ready.

MR. LICHTENBERG: If the Court please, I would like to ask leave of Court to file this motion to suppress at this time. It is information that was not always available that just came to my attention. I think we should discuss it out of the presence of the jury.

MR. TITUS: May we approach?

(At the bench):

MR. TITUS: I would submit to the Court this: This is a motion to suppress and Mr. Lichtenberg has just served to me when I came up to Court. Number one, I object to the motion because I don't think it is timely filed. Number two, I would object to it on the theory that the Government has no evidence which it intends to produce in this case that was taken from the premises of the defendant. There was evidence seen at his premises but none recovered. Consequently, the motion to suppress would not lie.

THE COURT: What do you to say to that ?

MR. LICHTENBERG: I take the position, if officers go into somebody's house and they make some observations and obtain information which they intend to use in the prosecution, it is tantamount to removing evidence. Evidence is not anything physical.

3 THE COURT: Is the Government going to use any evidence that it saw?

MR. TITUS: Yes, sir, only that that it saw.

THE COURT: I am not sure that I made my question clear. What is the Government going to use?

MR. TITUS: The officers went to the home of the defendant, and according to the officers they were admitted to the home, went up to the second floor of the house and observed a coat from which a button was missing. They recovered that button at the scene of the crime. Subsequently, the defendant destroyed the coat and admitted to the officers that he had burned it.

THE COURT: Do you agree that that is what the evidence will show?

MR. LICHTENBERG: Yes.

THE COURT: It will be shown at a hearing on the motion?

MR. LICHTENBERG: Yes.

THE COURT: I will permit the motion to be filed and will deny it.

MR. LICHTENBERG: If the court please, that does not preclude us from raising the question during the trial. Under 41(e) we can raise it at any time.

THE COURT: I will deal with that when you raise it.

4 MR. LICHTENBERG: May the Clerk file this?

THE COURT: Yes, sir.

* * * * *

MR. TITUS:

* * * * *

5 Very briefly, ladies and gentlemen of the jury, in support of the indictment the Government expects to show that between the hours of 4 and 5 a.m. on the morning of May 21, 1955, Doctor Samuel Becker with his wife and child were living at 5713 Sixteenth Street, Northwest, in the District of Columbia. That upon that occasion, at about that time, Doctor Becker and his wife were asleep in their bedroom, which is located on the second floor, I believe, of the house, when Doctor Becker was awakened at around 4:50 a.m. by a noise. We expect to show that he awakened, sat up in bed and at that time saw a shadow of a man standing at the door to the room. We will show that he hollered out, "Who is

there?" at the same time, jumping out of bed and running after that shadow which he saw. We will show that he pursued this man down the stairs and at

6 one point the man turned around and the doctor got a very good and clear look at his face from a light which is kept on in the hall, a night light. And we expect to show that the identification of the doctor was that the defendant in this case was the man he saw on the stairs in his home at that time. We expect to show that Doctor Becker then pursued the defendant out of the house through the back door or porch, the defendant ran out and the doctor heard an automobile start up a short distance away and ran over to see if he could see the automobile, and the car sped away.

The doctor returned to his house, and in the meantime the wife had notified the police. The doctor found his keys to his automobile were gone, found that two of his wallets were gone, one having \$130, and the other property missing which had been the property of his daughter. We expect to show that the officers of the detective bureau came to the scene that morning. Detective Daniel Slattery came on the scene. At that time he found a pearl button, a gray button, rather, on the porch of the house, outside porch of Doctor Becker's home, the porch or entrance through which the defendant had left. We expect to show that

7 subsequently, On May 26, 1955, which was about five days after the occurrence, Detective Slattery went to the home of the defendant, Harry C. Williams and on that occasion observed a coat in the closet of the defendant which had one gray button missing. We expect to show that subsequently the defendant was taken into custody, that he was confronted with Doctor Becker, at which time Doctor Becker identified him as the man he had seen in his house, that we expect to show that the defendant in reply to the accusations said nothing. He made no reply, did not affirm nor deny.

We expect to show that the defendant was asked about his coat which had been in his closet and the detective asked to go back to his home to see the coat. We expect to show that the defendant stated it wasn't any use in going back, that he had burned the coat. When the Government has shown you these facts, shown you that this offense occurred in the District of Columbia as we have outlined,

we will at the appropriate time request that you return a verdict of guilty as indicted.

* * * * *

DR. SAMUEL M. BECKER

* * * * *

DIRECT EXAMINATION

BY MR. TITUS:

Q. Doctor, would you state your name and home address, please? A. Doctor Samuel M. Becker, and I reside at 5713 Sixteenth Street, Northwest, Washington, D. C.

Q. Are you a doctor of medicine, sir. A. Yes, sir.

Q. Doctor Becker, directing your attention to the date May 21, 1955, did you reside at the same address at that time? A. Yes, sir.

Q. That is here in the District of Columbia? A. Yes, sir.

* * * * *

10 Q. Doctor Becker, I want to direct your attention to the late -- or early rather, morning hours of May 21, 1955. Did there come an occasion on that date when something unusual occurred in your house? A. Yes, sir.

Q. Would you very slowly and clearly, doctor, in your own words, relate to the Court and jury what occurred on the morning of May 21, 1955 at your home? A. About quarter to five in the morning I was asleep in my bed in the front room. Mrs. Becker and I have twin-bed arrangements there. I was awakened by a muffled or ruffled sound at my doorway which leads to the hall. As I sat up and looked out there at the same time asking, shouting, "Who's there," I started running towards where I thought the sound had come from.

Q. What happened then? A. I chased a man.

11 Q. In chasing the man did you have an opportunity to see what he looked like? A. Before I chased him I had an opportunity to see.

Q. Before you chased him? A. Yes, sir.

Q. Where was that? A. Right at my door entrance to my room.

Q. When you say that you saw him at the entrance to your door -- room,

what did you see? A. I looked up and saw the face of a man facing toward my bedroom. He seemed to be backing away.

Q. How were you able to see his face, doctor? A. Well, as I shouted and went after him, he turned in such a manner that the hall light was thrown directly onto his face.

Q. The hall light? A. Hall light, which is about 15 feet from him.

Q. Is that light kept on at night? A. Yes, sir.

Q. Do you see in this court room the man that you saw in the hall-way of your home on that morning? A. Yes, sir.

Q. Would you point to him? A. That gentleman sitting right next to the counsel, there.

Q. With the gray-white jacket? A. Gray-white jacket.

MR. TITUS: May the record show he has indicated the defendant, if your Honor please?

THE COURT: Very well.

BY MR. TITUS:

Q. Doctor, after you went towards this man that you saw would you relate to the Court and jury what then occurred, in detail? What did you do? A. As he ran down the stairway I ran after him.

Q. Which way did he go when he got down the stairway? A. He went -- at the bottom of the stairway he made a left turn into the living room which leads into a den.

Q. Did you go through the living room into the den after him? A. No, sir.

Q. What did you do? A. I went right through the hall-way into a dinette which lets into a den.

Q. Why did you do that? A. Because I thought he had come in through the kitchen if anybody had come in.

13 Q. After you went through this dinette, what did you do? A. As I was in the dinette I heard the den door slam shut.

Q. Did you then go to the den? A. Then I went into the den, opened up the den door and ran out into the back yard.

Q. When you got out in the back yard did you see this man any more?

A. No, sir.

* * * * *

Q. Did there come a time when you heard a noise? A. Yes, sir.

Q. What was that? A. I would refer it as the gunning of a motor car.

Q. How far away, if you could estimate, was that? A. Approximately one hundred feet.

MR. LICHTENBERG: I object to that unless he knows it was the defendant in that automobile.

THE COURT: Objection over-ruled.

BY MR. TITUS:

Q. On some occasion, then, did you return to your home, did you come back into your house? A. Yes, sir.

Q. Did you come back to your house? A. Yes, sir.

14 Q. When you came back, did you make a search of your home to see if anything was missing? A. I came back to get my car keys to get into my car to go after this motor car, at which time I found that my car keys and other personal valuables had gone.

Q. Amongst the other personal valuables that you referred to, would you describe to us what they were? A. One was a pocket billfold wallet containing money, a billfold not containing money but containing identification cards, and some personal effects.

Q. How much money was contained in the pocket billfold? A. The pocket billfold -- the side wallet --

Q. Yes. A. Approximately \$130.

Q. This house at 5713 Sixteenth Street, Northwest, is that your own home? A. Yes, sir.

Q. In whose (sic) name is the house? A. It is in the name of myself and Mrs. Becker.

Q. Mrs. Miriam Becker? A. Mrs. Miriam Becker, my wife.

* * * * *

15 Q. Doctor, directing your attention to May 26, 1955, did there come an occasion when you saw this same man, the defendant, again? A. Yes, sir.

Q. Was that at police headquarters? A. Well, it was in the building in this neighborhood. I think you would call it the police headquarters.

Q. At that time did you identify him as the man you had seen in the house? A. I did, sir.

Q. What, if anything, did you hear the defendant say in reply to your accusations or any other accusations made by him with regard to this housebreaking? A. He said nothing.

16 Q. He said nothing? Did he deny it? A. He didn't deny it, didn't affirm it. He just said nothing.

* * * * *

CROSS-EXAMINATION

BY MR. LICHTENBERG:

Q. When you went down to police headquarters, what occurred?

THE COURT: Did you get the question?

THE WITNESS: Yes, I am trying to get an explanation of the question. I can't follow it. When he says what occurred --

BY MR. LICHTENBERG:

Q. Did you see the defendant? A. I saw the defendant.

Q. Where did you see the defendant? A. I say at police headquarters, in a room.

Q. In a room by himself? A. There was a detective or two there.

Q. Do you know what a line-up is, doctor? A. I am not familiar with a line-up.

Q. Was this man place (sic) in a room with other men of similar description and were you asked to pick him out? A. No, sir.

17 Q. You were just shown this man and you said, "This was the man"?

A. I was asked whether or not he was the man. I said, "Yes."

Q. Did you have any conversation with this man? A. I did, sir.

Q. Did you have any conversation with him concerning fire arms or shooting? A. I don't believe I did.

Q. Specifically, doctor, do you recall whether or not you said this to him: "Son, if I had seen you I would have shot the hell out of you"? A. I don't think I said that. I've never even owned a gun.

Q. You don't have a gun in the house? A. I have never had ownership or possession of a gun, sir.

* * * * *

18 Q. What description of this man did you give to the police? A. I gave his general height and his build.

Q. Did you tell the police whether or not he had a mustache? A. I did not.

Q. As a matter of fact, didn't you tell the police he had no mustache? A. I don't recollect whether he did or did not, sir.

Q. You got a good look at him, didn't you? A. I got a good look at him.

Q. You got a good look at his face? A. I did, sir.

Q. You are trained to observe facial expressions and so forth in your medical training, are you not? A. That comes with experience.

19 Q. And in spite of that, you couldn't tell the police whether or not he had a mustache? A. I don't remember whether I told them or not.

Q. You didn't think that was of sufficient importance to mention?

MR. TITUS: I object, that is argumentative.

THE COURT: He may answer.

THE WITNESS: What was the question?

BY MR. LICHTENBERG:

Q. You didn't think that was of sufficient importance to call to the police's attention? A. It didn't enter my mind.

* * * * *

20 Q. When you went to police headquarters were you told by the policemen when this man was arrested? A. I don't remember that.

Q. Did they tell you how long they had had him in custody? A. I don't remember that, sir.

21 Q. When did you go to police headquarters? A. It was 3 or 4 or 5 days after this incident.

Q. What time of day? A. It was in the evening, I'd say about maybe 9 or 10 in the evening, maybe 10:30, maybe 11 o'clock. I don't remember.

Q. How long did you remain at headquarters? A. Approximately an hour.

Q. Prior to your going to headquarters on this occasion had you been to headquarters? A. No, sir.

Q. Had you done anything or made any attempt to identify this man until after he was taken into custody? A. I don't follow you.

Q. Did you go to headquarters to look at some photographs of people?
A. My recollection is I did not.

Q. In other words, the police didn't ask you to do anything until they invited you down to take a look?

A. They invited me down to take a look at a man to see whether or not I could identify him as the one I encountered in my house.

Q. You were told that was the purpose of your being invited downtown to identify a suspect? A. I was told they had a suspect down there to see if I could
22 identify him.

Q. The police did not ask you to do anything else in an attempt to locate the person who broke into your house? A. My recollection is that is all I was told to do.

Q. Didn't look through any photographs? A. That's correct.

Q. At any other defendants? You only looked at this man? A. That is the only man I saw.

* * * * *

DANIEL J. SLATTERY

was called as a witness and, being first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. TITUS:

Q. Will you state your name and assignment, please, sir? A. Daniel J. Slattery, Detective Sergeant, Metropolitan Police Department.

Q. Are you attached to any specific squad? A. General Assignment Squad.

23 Q. Mr. Slattery, did you have an occasion to be in charge of the investigation of the complaint of one Doctor Samuel Becker concerning a housebreaking on May 25, 1955? A. Yes, I did.

Q. In the course of that investigation did you go to the house located at 5713 Sixteenth Street? A. I did.

Q. About what time, if you recall, did you arrive at the house? A. It was between 10 and 11 o'clock in the morning.

Q. Prior to your arriving, to your knowledge, were any other police officers or had any other police officers been on the scene? A. Yes, they had been there.

Q. Were they the uniformed officers? A. Yes, sir.

Q. After you arrived at the house did you conduct a search of the premises? A. I did, yes.

Q. Did you discover or did you learn how entry of the house had been made? A. Yes.

24 Q. What did you find with regard to that? A. The house had been entered by the rear door, that is on a porch. This door leads into a den in the rear of the house on the first floor.

Q. How was the door opened, did you discover that, sir? A. The door had been -- there was evidence of a little chip in the wood similar to the mark that a screw driver or similar type instrument might make.

Q. Was that chip in the wood near where the lock of the door was? A. Yes.

Q. Did you have occasion to search the area of the back porch outside the door of the den? A. I did, yes.

Q. Did you find anything out there? A. Yes, I found a gray coat button on the back porch.

Q. Will you produce that button? Is this the button that you found on the porch? A. It is, yes, sir.

MR. TITUS: May this be marked Government Exhibit No. 1 for identification.

THE DEPUTY CLERK: Government Exhibit Number 1 for identification.

(Subject item was marked as Government Exhibit No. 1 for identification)

25 BY MR. TITUS:

Q. This button which has now been marked as the exhibit just mentioned by the Clerk was found by you, yourself, is that correct? A. That's correct.

Q. Detective Slattery, directing your attention to the defendant in this case, Harry C. Williams, when did he come into your custody, if you recall?

A. It was in the evening of May 26.

Q. Of May 26? A. Yes, I think that is the correct date.

Q. Do you know, yourself, by whom he was arrested? A. He was arrested by Sergeant Connors.

Q. Sergeant Connors? Yes, sir.

Q. Is that Sergeant Leo Connors -- what squad is he with? A. General Assignments Squad.

Q. Your same squad? A. Yes, sir.

Q. Prior to the time when the defendant was in your custody did you have occasion to go to the defendant's home? A. Yes, I went to the defendant's home.

26 Q. Do you recall, Detective Slattery, approximately what time it was or when it was you went to his home? A. It was after 11 o'clock in the morning of May 26.

Q. In the morning of May 26? A. Between 11 and 12.

Q. When you went to his home were you admitted into the house? A. Yes, I identified myself as a police officer and his sister admitted me into the house. It is an apartment.

Q. A sister of the defendant? A. Yes -- 1600 block of LaMont Street, Northwest, apartment 31, I believe.

Q. After entering the premises where you were admitted by the sister of this defendant, Harry C. Williams, did you have occasion to go to the room occupied by the defendant, Harry C. Williams?

MR. LICHTENBERG: I object to that.

THE COURT: Over-ruled.

THE WITNESS: The defendant had a -- was laying on a bed in the hall of this apartment right at the doorway.

BY MR. TITUS:

Q. Did you make any search of the apartment with regard to the button which you had found prior at the house of Doctor Becker?

MR. LICHTENBERG: I object to that, if the Court please.

27 THE COURT: Over-ruled.

THE WITNESS: There is a closet in this hallway and in the closet there were some clothing and there was a double-breasted gray suit with a button similar to this with one of the buttons missing. I was told that that coat was owned by the defendant --

MR. LICHTENBERG: I object to that.

THE COURT: Sustained.

BY MR. TITUS:

Q. Subsequent to the time when the defendant was arrested did you have occasion to question the defendant with regard to the complaint of Doctor Becker about the housebreaking? A. I did.

Q. What, if anything, if you recall, did the defendant say concerning this housebreaking? A. Well, the defendant denied it.

Q. Subsequent to the conversation you had with the defendant did there come a time when Doctor Becker was brought to headquarters of the police department? A. Doctor Becker came to police headquarters, yes.

28 Q. At that time do you recall whether or not he made any statement regarding the identification of the defendant, Harry C. Williams? A. Doctor Becker, in the presence of Harry C. Williams, said, that that was the man that was in his home the morning of May 21. He said it was the man he surprised while going through his trousers pocket and whom he chased out of the house.

Q. What, if anything, did the defendant say after this statement was made by Doctor Becker? A. The defendant said nothing.

Q. Did he deny it at that time? A. No, not at that time.

Q. Did you question the defendant with regard to this suit which you had found in the place where he was staying? A. I showed this button to the defendant and went with the defendant to his home.

Q. When you got to his home what did you find? A. The coat that I had previously seen was not there and I asked the defendant where it was and he said he had a gray coat with buttons similar to this, and later he told us down at police headquarters that we wouldn't find that coat, that he had burned it up, so I asked him why he had burned it up and destroyed it, and he just remained silent.

MR. TITUS: Your witness.

29

CROSS EXAMINATION

BY MR. LICHTENBERG:

Q. What time was this man arrested? A. I didn't arrest the defendant. He was arrested in the afternoon, to my knowledge, between 2 and 4 o'clock, May 26.

Q. What time did Doctor Becker come to police headquarters? A. Doctor Becker came to police headquarters on May 26 at somewhere between 8 and 10 p.m.

Q. At that time did you conduct a line-up for the doctor's benefit to help him in his identification? A. No, sir.

Q. You just had this man there, and that's all, is that right? A. That's correct.

Q. Doctor Becker took a look at him and said, "That's the man?" A. That's correct, yes .

Q. Did Doctor Becker make any description of the man who prowled through his house on the 21st? A. Yes, he gave me a description.

Q. Do you have that description? A. The description fits the defendant.

30 Q. I didn't ask you that, Mr. Slattery. Do you have that description with you? A. I may have, if I may refer to my notes.

Q. If you will, please. A. Doctor Becker described the man to me as being about his size and being a colored man, and about being as heavy as he was.

Q. Mr. Slattery, can you be a little more specific in the description? A. Well, I was there with the doctor. He told me he was about his height.

Q. Did he tell you anything about the man's mustache? A. No.

Q. Did the doctor also tell you that he observed the man under a light?

A. The doctor took me into his house and pointed out to me, took me up into his bedroom and showed me that he was lying in his bed, and he said he saw the man at the end of his bed crouching over his chair on which his trousers were lying. He says he woke, that the man looked at him. He says he jumped up out of bed, then the man turned, the man ran out into the hallway and down the steps, the doctor in pursuit. I asked the doctor if there was a light in the hallway and he said yes, there was a light at the far end of the hallway. And he

31 said he chased the man down the steps and when he got down to the bottom of the steps, the doctor had to wait a minute or two to determine which point of exit he went out of the house. There are five doorways on the first floor of the doctor's house that a person could get out of.

The doctor then said he heard the door in his den slam so he immediately went that way back into the den and then he went down from the den down this little flight of steps to the end of his lot --

Q. I don't want to interrupt you, but we are discussing now the light and the look that he got, if he got one at the defendant. Did he tell you whether or not he got a good look at the defendant? A. He said that he got a good look at the defendant.

Q. He made no mention that the man had a mustache, is that right? A. No.

Q. When you saw this man on May 27 he had a mustache, didn't he? A. Yes.

Q. Like he has now? A. Yes.

Q. It wasn't the type of a mustache that could have been grown in four or five days, it was one he had been wearing for some time, isn't that correct?

A. I don't know how long he had been wearing it. When I saw him he had the

32 mustache, yes, sir.

Q. Mr. Slattery, when you went through his apartment, did you have a warrant? A. I went there to arrest the defendant. No, sir, I did not have a warrant.

Q. When you asked Mrs. Berry, his sister, whether you could go in, did you push your way in or did you wait until she gave you permission? A. I knocked on the door and I asked her if Harry Carlos Williams lived in this apartment. She said yes. I said, "May I see him?" She said, "Well, he's not here."

I said, "May I come inside and talk to you?" I said, "I don't want to discuss my business out in the hallway, let's go inside where it's private." I told her I was a policeman, showed her my badge, and she admitted me into this apartment.

Q. Did she also consent to your going up on the other floor, the second floor, to search? A. She lives in an apartment and it is all on the same floor.

Q. Did she give you permission to search the apartment?

33 MR. TITUS: I object, once the admission has been made that he entered the apartment, I don't think this is material.

THE COURT: Sustain the objection.

THE WITNESS: She had no objections to my entering the apartment, no.

BY MR. LICHTENBERG:

Q. Did you take her into custody, too? A. No, sir.

Q. Wasn't she taken down to police headquarters? A. No, sir.

Q. Between 5/21 and 5/26 did Doctor Becker look at any photographs of people down at headquarters? A. Yes, he came to police headquarters, I believe.

Q. Did he look at any photographs? A. Yes, he looked at some photographs.

Q. You can't be mistaken about that, can you? A. I think he came to police headquarters and looked at photographs, to the best of recollection, yes.

MR. LICHTENBERG: That is all.

MR. TITUS: That is all.

If the Court please, the Government will offer in evidence what has been identified as Government Exhibit No. 1.

34 THE COURT: It will be received.

(Government Exhibit No. 1 heretofore marked for identification was received in evidence.)

MR. TITUS: We will rest our case, Your Honor.

MR. LICHTENBERG: May we approach the bench, sir.

(Whereupon at the bench):

MR. LICHTENBERG: If the Court please, at this time I make a motion for judgment of acquittal. The Government has failed to prove anything by

way of positive identification. Of course, the doctor was positive but we must also be reasonable about that. The man is awakened from sleep, he couldn't be so positive and so sure.

There is a divergence of testimony which I think is fatal to the Government's case. The Sergeant is positive the man looked at some photographs down at police headquarters, the doctor said he did not do that.

The doctor said he never saw the man. How was the man picked up -- no identification, no line-up. They just knew this man was the one for reasons best known to themselves. The doctor was told to identify him, he identified him. That is all the Government has. The doctor isn't sure of the amount of \$130, not sure as to the amount. He is so positive in his identification, he doesn't recall whether or not the man had a mustache.

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35

HARRY C. WILLIAMS.

* * * * *

DIRECT EXAMINATION

* * * * *

Q. Have you been in trouble before? A. I have.

Q. What kind of trouble? A. Well, I've --

Q. Keep your voice up. A. I've been in trouble for housebreaking before.

MR. TITUS: For what?

THE WITNESS: For housebreaking.

* * * * *

37

Q. You were arrested on the 26th? A. That's right.

Q. What time of day were you arrested? A. About 3:30 in the afternoon.

Q. At what time did Doctor Becker come down to headquarters? A. Doctor Becker came to headquarters about ten or ten-thirty p.m.

Q. Were you placed in a room with other men of your color and your size?
A. No, I wasn't.

Q. You were the only one in the room other than the detectives? A. That's right.

Q. Doctor Becker took a look at you and said you were the man? A. Yes.

Q. Did you have any conversation with Doctor Becker concerning a gun or a pistol? A. Well, the next morning he came back to headquarters, the next day, the 27th, he said, he came and sat down in front of me and he said, "If I saw you that morning, I would have shot the hell out of you."

38 Q. He would have what? A. He would have shot the hell out of me.

Q. Did he tell you whether or not he had a gun? A. No, he just said that.

Q. He told you if he had seen you he would have shot the hell out of you?

A. Yes.

Q. How long have you been wearing that mustache? A. Oh, ever since around December.

Q. When Officer Slattery arrested you, or Officer Connors arrested you and told you about this, you denied it, is that correct? A. That's right.

Q. When Doctor Becker identified you did you say anything to him or to the officers at that time? A. No.

Q. Why? A. Well, it wasn't any use.

Q. Were you in custody at that time? A. Yes.

Q. Had you been charged with any offense? A. No.

Q. Being held for investigation? A. Yes.

39 Q. Did you fail to deny it because you were guilty or because you were in custody? A. Well, I mean they told me I did it, so I just didn't say anything, no use arguing with them because if you argue with them they want to beat on you.

Q. Did the officers beat on you in any way? A. Not these officers, but other officers did.

Q. In connection with this case? A. Yes.

Q. This particular arrest? A. This particular arrest.

Q. Tell the Court and jury about that. A. Well, it was right after my sister, two sisters was brought down to headquarters that night about 10 o'clock, after they left the two officers who had been questioning me, they went off duty and two other officers came on. I don't know his name but I have his card in my wallet at the District Jail. And he sat up there and the whole time he was questioning me about other housebreakings he was beating me all in the face.

Q. Did you report that to anybody? A. No. I told the other detectives about it.

Q. What detectives? A. Not this one that testified. I don't know their names.

40 Q. Did you see any other officer that -- you heard the name that Mr. Titus mentioned -- is it Mr. Connors? A. No, I don't think I know him by name.

Q. Of course, these two officers in this case didn't do anything to you? A. No.

Q. The officers that beat you were those that were trying to get you to admit some other housebreakings that were on the books? A. That's right.

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CROSS-EXAMINATION

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Q. Are you the same Harry Carlos Williams who on December 12 or about December 12 of 1941 was convicted of housebreaking and petty larceny? A. Yes.

Q. Are you the same Harry Carlos Williams who around January 4, 1943, was convicted of housebreaking? A. Yes.

Q. Are you the same Harry Carlos Williams who around July 23, 1943 was convicted of a violation of the Motor Vehicle Theft Act? A. That's right.

41 Q. Are you the same Harry Carlos Williams who on June -- around June 1, 1948, was convicted of housebreaking? A. Yes.

Q. You say, Mr. Williams, that between 4 and 5 a.m. on the morning of May 21, 1955, you were where? A. On May 21st?

Q. Yes, the morning when this crime occurred? A. I was home.

Q. You were home? A. Yes.

Q. Where were you living at that time? A. 1627 Lamont Street, Northwest.

Q. With whom? A. With my sister and mother.

Q. Sister and mother? A. Yes.

Q. Was that in their apartment? A. Yes, apartment 31.

Q. What were you working at that time? A. Well, I wasn't working at that time.

Q. You weren't working? A. No.

Q. What had been your last employment before the date of May 21, 1955?

42 A. Well, the last place I had worked was Colony Motors, in the 4900 block of Georgia Avenue.

Q. When was that? A. That was during, from February up until April, I think it was.

Q. February until April? A. I believe it was.

Q. Of 1955? A. Approximately '55.

Q. You left in April and from April until this date of this crime you were not working? A. No.

Q. And you were living at the house or apartment owned by whom? Was it your sister's? A. My sister's apartment.

Q. Was she supporting you? A. Well, --

MR. LICHTENBERG: I object, that is an unfair.

THE COURT: Over-ruled.

BY MR. TITUS:

Q. Was she supporting you? A. No.

Q. Who was paying for your food? A. Well, she would buy the food.

43 Q. On the morning that this crime occurred between 4 and 5 you say you were at home at this apartment. Was your sister there too? A. Yes.

Q. You never left the house from what time to what time? A. Well, I don't remember. All I know is I never been out in the streets at that hour in the morning.

Q. Let's make it specific to the morning of this particular crime, May 21, what time did you go to bed on the night of May 20? That is the night before this early morning hour. A. Well, I don't know exactly.

Q. Will you give us your best estimate? A. Well, I'm always in the bed before 2 o'clock.

Q. That is not always, let's confine it to the date of May 21 and May 20, the night before. What time did you go to bed that night? A. I should say between 12 and 1.

Q. 12 and 1? A. Yes.

Q. When you went to bed that night between 12 and 1 your sister was there,

was she? A. Yes, she was there.

44 Q. Was your mother there too? A. Yes.

Q. What is your sister's name? A. Maizie Berry.

Q. What is your mother's name? A. Estelle Williams.

Q. And your mother and sister were there when you went to bed, they had gone to bed at that time? A. Yes, they had gone to bed.

Q. What time did they go to bed? A. I don't remember.

Q. Will you give us your best estimate? A. They was in the bed when I came off.

Q. What time did you come home? A. Between 12 or 1 o'clock, some where around then.

Q. When you came home they were in bed? A. Yes.

Q. They didn't wake up when you came home, did they? A. I don't know.

MR. LICHTENBERG: I object, sounds argumentative.

THE COURT: Over-ruled.

BY MR. TITUS:

Q. They didn't wake up, did they? A. I don't know.

45 Q. Did you awake them? A. I don't know, I didn't disturb them at all.

Q. You didn't awaken them, did you? A. I didn't go in their rooms to see if they was awake or not.

Q. Did you have a conversation? A. No.

Q. As far as you know, you don't know what time they came home, is that right? A. I don't know.

Q. Did they say anything about it? A. No, they didn't say anything to me.

Q. Then as a matter of fact, to your knowledge they don't know whether you were there at 4 or 5 in the morning or not, do you? A. I don't know.

Q. They weren't awake, were they? A. I don't know. I didn't go in their rooms.

Q. How many rooms do you have in the apartment? A. About, I think it is three bedrooms.

Q. And how many other rooms besides the three bedrooms? A. Living room, kitchen and bath.

46 Q. Which bedroom did you occupy? A. Well, I didn't occupy. I occupied a couch in the hallway when you first entered the door.

Q. Who occupied the three bedrooms? A. Well, my sister and mother. I have other sisters.

Q. Were the other sisters there too on this night? A. Yes.

Q. Tell us what their names were? A. Lulu Williams.

Q. Lulu Williams? A. Yes. Ethel Williams.

Q. Ethel Williams? A. Yes.

Q. And any others? A. No -- my two kids.

Q. Your two kids? A. Yes.

Q. What about your wife? A. I am divorced.

Q. How many in total were in the apartment on the night of May 20, 1955 -- you were taken around 12, or midnight? A. Yes.

Q. How many of them were there? A. All of them was there to my knowledge.

47 Q. How many? A. Five or six.

Q. They were occupying the three bedrooms? A. Yes.

Q. Were any of those awake? A. I don't know.

Q. Did you talk to any of them? A. No.

Q. None of them opened the doors to their bedrooms and said, "Hello, how are you," or anything like that? A. No.

Q. You didn't go to work the next day, did you? A. The next day I got a job.

Q. You got a job the next day? A. Yes.

Q. Where did you get your job? A. At an apartment house in the -- between 15th and 16th on Massachusetts Avenue, Northwest.

Q. About what time was it you got your job? A. I went to work that morning at about 8 o'clock.

Q. At about 8 o'clock that morning? A. Yes.

Q. Do you recall whom you were out with up until the time of midnight on the night of May 20? A. No, I don't, not exactly.

48 Q. Where were you? A. Well, I have another kid by my first wife, I usually go over to my first wife's house to visit the kid.

Q. How many kids have you got? A. Three, altogether.

Q. Let's get down to the night of May 20 -- not what you usually do -- May 20. Did you go to your first child's house that night? A. I don't remember exactly.

Q. You owned a suit with a button missing, did you? A. No.

Q. You did not own a suit with a button missing? A. No.

Q. You are sure of that? A. I am positive.

Q. You heard this officer testify that there wasn't any use looking for that suit, you had burned it. That was a lie? A. That's right.

Q. A lie? A. Yes.

Q. Is there a closet there in that front room where your bed was or your cot? A. Yes.

49 Q. What do you keep there? A. My clothes.

Q. But you didn't own a suit that had a button missing, a blue suit? A. No.

Q. Any kind of a suit with a button missing? A. No.

Q. You said that this officer lied when he said you made that remark. That was Officer Slattery. He was not one of the officers that beat you, was he? A. No, he wasn't.

Q. You say that there were two other officers who beat you, is that right?

A. There was one other officer, there were two of them together.

Q. Were they in uniform? A. No, they were detectives.

Q. Do you know what squad they were attached to? A. General Assignments.

Q. Were either one of them, or was the one that beat you, asking you about this particular offense at Doctor Becker's? A. Yes, he asked me about that.

50 Q. He was asking you, too? A. Yes.

Q. In addition to this officer here that testified? A. Yes.

Q. Is that correct? A. That's right.

Q. This officer that beat you, you don't know his name? A. I have his card. He gave me his card.

Q. Where do you have that card? A. In my wallet at the District Jail.

Q. He gave you the card? A. Yes, he gave me the card later.

Q. Did you demand it from him? A. No. He gave me the card and said if I wanted to tell him about it or if I decided to tell him anything here was his card, to get in touch with him.

Q. He left the card so if you wanted to make any statements about the questions he was asking you, that you would know where to get in touch with him? A. Yes.

Q. He left his card with you -- A. While he was questioning me.

Q. He had beaten you before giving you the card? A. Yes.

51 Q. This beating he gave you was where, in the face? A. In the face.

Q. It made you all bloody, did it? A. No.

Q. How did the results of this beating occur? Did you have any marks?
A. No, it wasn't any marks. He was cursing me when I go down stairs, he called me all kinds of names and hit me back and forth with his hand.

Q. With the open hand? A. Yes.

Q. Just like that across the face? A. Yes.

Q. How many times? A. I don't know, about ten or twenty times.

Q. Were you in severe pain? A. I didn't say anything, I just sit in the chair, let him do anything he wanted to do, I didn't answer any of his questions or nothing.

Q. You didn't answer any of the questions and you didn't say anything about being slapped? A. To who?

Q. To him? A. No.

52 Q. You didn't complain about it? A. No.

Q. After he left and left his card with you, did you then immediately complain to some jail authority? A. No.

Q. Did you ask to see the prison doctor to show him the marks? A. There wasn't any marks.

Q. You said you mentioned to some officers, some detectives about the fact that you had been beaten, is that correct? A. Yes.

Q. When you did that you showed him the card, did you, the name of the detective? A. No, after I went down to the jail, the same two officers that arrested me, they came down there to interview me, and then they tried to get me to tell them about this crime. I told them I didn't know anything about it.

Q. About the crime that we are trying here? A. Yes.

Q. You said you didn't know anything about it; what else? A. He said, "You know you have been treated all right, you haven't had any rough treatments
53 and all," say "tell us about it." So I say, "I don't know anything to tell you about." So I say, that's when I mentioned the beating of the other officer to him.

Q. The beating across the face with the hand? A. Yes.

Q. You mentioned that to whom? A. To the detectives that came down to the jail.

Q. Do you remember who that was? A. Well, the one that testified was one of them.

Q. Detective Slattery? A. Yes.

MR. TITUS: Will you stand up, Detective Slattery?

(Witness Slattery stood.)

THE WITNESS: Yes.

Q. Did you tell this officer about the beating? A. No, the one that was with him, I told him about it.

Q. Would that be Detective Conors? A. I don't know his name.

Q. In telling this officer about it, you told him the name of the other officer who had done the slapping? A. I told him the officer that taken over when they went off duty.

54 Q. You had the card of this officer? A. They had taken the card, they take everything from me when you go into jail.

Q. Who had taken the card? A. The District Jail, they takes that and keep it, your private property.

Q. Then you knew it was kept there as your private property, didn't you?

A. Yes.

Q. And it is there now? A. Yes, it is there now.

Q. And this card that was given you by this officer you told your lawyer about, didn't you? A. No, I didn't mention it to my lawyer.

Q. Did you understand you were coming to trial today? A. Yes.

Q. And you interviewed, talked with your lawyer before? A. Yes, I have talked to my lawyer.

MR. TITUS: I have no further questions.

REDIRECT EXAMINATION

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55 Q. Did you tell me you had been beaten before? A. No.

* * * * *

56 RECROSS EXAMINATION

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Q. You were real low on cash about that time, weren't you? A. Yes.

* * * * *

MAIZIE BERRY

* * * * *

DIRECT EXAMINATION

* * * * *

Q. Would you give the court and jury your full name and address? Maizie Berry.

Q. Where do you live? A. 1627 Lamont Street, Northwest.

Q. Are you the sister of the defendant? A. Yes, I am.

57 Q. Do you know whether or not he was home on May 21, 1955? A. Well, May 21?

Q. Yes. A. I don't remember.

Q. Mrs. Berry, do you recall when Mr. Slattery came to your apartment? A. Yes, he did.

Q. Can you tell us what conversation you had with him at that time? A. Well, he came to my apartment and asked me to let him come in. So I did and he asked me that he wanted to take a look at Harry's clothes. So, by me not

knowing, I just let him come on in and he looked through Harry's clothes.

Q. Did he tell you he was a police officer? A. Yes, he showed me his badge.

Q. Did he tell you you could refuse to let him in if you wanted to? A. No.

Q. Why did you let him in?

MR. TITUS: I object.

THE COURT: Objection sustained.

BY MR. LICHTENBERG:

Q. He looked through Harry's clothes? A. Yes, he did.

58 Q. Did he remove anything, take anything away from there? A. No, I don't think so.

Q. Did there come a time when you were taken to police headquarters?

A. They came back that night and carried me down to the police headquarters for questioning.

Q. Did they question you? A. Yes.

Q. You were in custody at the time, were you under arrest, do you know?

A. No. He told me that if I didn't tell him about some coat that he would arrest me.

Q. Did you tell him anything about any coat? A. No, I didn't know anything about it.

MR. LICHTENBERG: Your witness.

CROSS EXAMINATION

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Q. Who asked you about the coat? A. One of the officers that came out.

MR. TITUS: Mr. Slattery, stand.

(Witness Slattery stood.)

BY MR. TITUS:

Q. Is that the officer? A. He is one of them, it was two of them.

59 Q. He is the one who asked you about the coat? A. I think it was him.

Q. As to the night, the early morning, the night of May 20, 1955, and the early morning of May 21, 1955, you weren't living at that time where the defendant was living, were you? A. Yes, I was.

Q. Do you know whether or not he was home that night? A. May 20-what?

Q. The night of May 20, and the early morning of May 21, 1955. A. Yes, he was home, as I recall.

Q. He was home. A moment ago you weren't sure, but you are sure now?
A. I believe he was home that morning.

Q. You believe he was? A. Yes.

Q. You recall the date because of what? A. Pardon?

Q. When I mentioned the date May 21, on the night of May 20, do you recall that date just like that? A. No, I don't think I could recall that.

Q. Then what makes you sure he was home that night? A. I wanted to be sure, I just don't know.

60 THE COURT: What did you say?

THE WITNESS: I wanted to be sure whether I was right or not. I really don't remember whether he was or not.

BY MR. TITUS:

Q. This coat closet where his clothes were kept, you recall the officer going through his closet, do you? A. Yes.

Q. Is this your brother? A. Yes.

Q. What clothes of your brother were in that closet? A. What clothes?
All of his clothes was in there.

Q. Do you remember what kind of suits he had in there? A. No, I don't.

Q. Do you remember how many suits he had in there? A. No, I don't.

Q. When was the last time he had worked prior to that, around that time the officer came to look at the suit? A. I don't remember.

Q. Had it been quite a while? A. No, it hadn't been too long.

Q. Do you remember where he worked? A. No, I don't remember where he was working at the time.

61 Q. You don't remember when the officer went through this closet later on he asked you something about a coat? What coat was he referring to, do you know? A. It was one of Harry's coats, I guess.

Q. What was wrong with one of Harry's coats, do you remember? A. I don't remember.

Q. Did he show you anything on the coat that was a little unusual? A. No, he didn't say anything, he just looked at the coat, that's all.

Q. Button gone?

MR. LICHTENBERG: I object to that.

THE COURT: Objection over-ruled.

BY MR. TITUS:

Q. Button missing? A. I heard it was a button, but he didn't mention anything to me about a button.

Q. You heard it was a button from him, from the officer? A. Yes.

MR. TITUS: That is all.

62

REDIRECT EXAMINATION

* * * * *

Q. During the week from May 21 to May 26 did you give him any money? A. Yes, I did.

Q. How much money did you give him? A. Well, I don't remember just how much but I would give him as much as I could.

Q. Did he have a lot of money in his pockets that you know about? A. No, he never did have any money because he would ask me for money, I'd give him money most of the time to help him out.

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RECROSS EXAMINATION

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Q. That was during what week? A. I don't remember what week it was.

Q. You don't remember what week? A. I gave him money the whole time he was there.

63

Q. How often did you give him money? A. Just about every week.

Q. About how much? A. As much as I could spare. I didn't have no special amount to give him.

Q. Just give us an estimate. A. Sometimes I would give him 10, sometimes 15, as much as I could spare.

Q. \$10 or \$15 a week? A. I wouldn't say a week, no.

Q. Two weeks? A. Just whenever I could spare it I would give it to him.

Q. Maybe \$5 or \$10 a week at the most, something like that, is that right? A. Something like that.

* * * * *

64

JURY CHARGE

THE COURT: Ladies and gentlemen of the jury, this has been a short case. It started this morning and concluded before lunch. I don't think it is necessary for me to review the evidence. You have heard the witnesses, the complaining witness, Doctor Becker, and the Sergeant of Police, and the defendant and his sister.

As you well know, you are the ones who must decide what are the facts based on the evidence which you have heard here this morning.

As I have advised you before, there are certain principles that apply in all criminal cases. They apply in this one.

65 The defendant has been indicted on two counts of an indictment, one charging housebreaking and the other charging grand larceny.

I will discuss the indictment with you very briefly. Of course, you know the indictment is not evidence. The indictment is a charge made against the defendant so that he will know what he is charged with and is the machinery whereby he is brought to trial.

This defendant came into court presumed to be innocent. That presumption of innocence remains with him throughout the course of the trial until overcome by evidence satisfying you of his guilt beyond a reasonable doubt.

There is no duty on the part of the defendant to prove his innocence. The burden is upon the Government to prove his guilt beyond a reasonable doubt.

I want to discuss that with you very briefly. Beyond a reasonable doubt does not mean beyond all doubt. It does not mean that the Government must prove his guilt to an absolute or mathematical certainty. It means that the Government must prove his guilt to a moral certainty.

Putting it another way, beyond a reasonable doubt means beyond a doubt based on reason, not based on speculation or conjecture.

You have the duty of weighing the evidence. You limit your consideration

66 of the case to the evidence that you have heard here. And if after weighing the evidence you cannot say that you are satisfied of the guilt of the defendant, then you have a reasonable doubt and should find him not guilty. On the other hand, if after weighing all the evidence you can say you have an abiding conviction of the guilt of the defendant, such a conviction as you would be willing to act upon in determining the more important affairs of your own every day lives, then you do not have a reasonable doubt and may find him guilty.

In a case like this where there is a conflict in the evidence you are, as the judges of the facts, called upon to weigh the credibility of the witnesses, in other words, to determine which ones you believe and which ones you don't believe -- doing that because you do have a conflict, you have had an opportunity to observe the witnesses on the witness stand, to observe their demeanor, their frankness, the accuracy of their information, their candor or lack of candor, their interest in the outcome of the case -- and apply to their testimony the same tests which you would apply in your own lives in determining whether someone is telling the truth or not telling the truth.

As I said a moment ago, one of the tests that you apply is the test of interest of the witness. In that connection, of course, the defendant is a competent witness and had a right to testify. But in weighing his testimony you have a right to take into consideration his peculiar circumstance and interest in the outcome of your decision and give to his testimony such weight as you think is wise.

Also in that connection, there has been offered in evidence some record of prior convictions of the defendant. You recall what the testimony was in that regard. That testimony was not admitted for the purpose of establishing the defendant's guilt in this case. That was not evidence of guilt in this case. It was admitted in evidence as having a bearing upon the credibility of the witness for you to consider in determining the credibility of the witness.

In this case, as I said a moment ago, the indictment is in two counts. It is very simple. The first count is that on or about May 21, 1955, within the District of Columbia, Harry C. Williams entered the dwelling of Samuel M. Becker

and Judy Becker with the intent to steal property of another. I don't think this will confuse you, but you will take this indictment to the jury room. You may recall that Doctor Becker stated that the property was in the name of Samuel M. Becker and Miriam Becker, who is his wife. At the bench before the trial got under way I permitted an amendment to the indictment so it would recite

68 the fact that the property was in the name of Samuel Becker and Miriam Becker. I think the testimony in that regard is that Judy Becker is his daughter. That is the first count of the indictment.

In that connection I want to read to you the provision of the Code which applies, covers a lot of territory that isn't involved in this proceeding, but I suppose I should read it all to you:

"Whoever shall either in the night or in the daytime break and enter or enter without breaking any dwelling --" I could stop there, because that is what this indictment charge is. -- I will read -- "any dwelling, bank, store, warehouse, shop, stable or other building or any apartment or room, whether at the time occupied or not, or any steam boat, canal boat, vessel or other water craft, or railroad car, or any other yard where any lumber, coal, or other goods or chattels are deposited or kept for the purpose of trade, with attempt to break and carry away any part thereof or any fixture or other thing attached to or connected with the same, or to commit any criminal offense, shall be punished by the penalty described by law."

I might reduce that as far as this charge is concerned, the code provision would be:

69 "Whoever shall either in the night or in the daytime break and enter or enter without breaking any dwelling to commit any criminal offense shall be punished as the law provides."

I think that is clear, I don't think it requires any explanation on my part.

The burden is on the Government to establish that Harry C. Williams on May 21, 1955, entered the dwelling of the Beckers with intent to steal property of another.

With respect to the second count of the indictment, on or about May 21,

within the District of Columbia, Harry C. Williams stole the property of Samuel M. Becker and Judy Becker of the value of about \$176 consisting of the following: two wallets each of the value of \$15, one key case of the value of \$1.00, \$130 in money, property of Samuel Becker, one wallet of the value of \$5.00 and \$10.00 in money, property of Judy Becker.

You will recall that I struck the testimony of Doctor Becker with respect to the wallet and the \$10, which was the property of Judy Becker, as to which he was not qualified to testify.

That does leave the remaining items which were the subject of Doctor Becker's testimony. That second count of the indictment is based upon a provision of our law which reads in this language:

70 "Whoever shall feloniously take and carry away anything of value of the amount of value of \$100 or upwards shall be punished as thereafter provided."

The words "feloniously take and carry away" mean merely that the property must have been unlawfully taken by the defendant from the possession of another with intent to appropriate it to his own use. In order for you to find the defendant guilty of grand larceny under the second count of the indictment you must find that the Government has proved beyond a reasonable doubt that he took the property from this address on Sixteenth Street and that he did so unlawfully and with intent to convert it to his own use, and it was of the value of \$100 or more.

Those are these two counts of the indictment, those are the questions which as the judges of the facts you must pass on.

Gentlemen, is there anything further?

MR. LICHTENBERG: May we approach the bench?

(At the bench:)

MR. LICHTENBERG: If the Court please, I would like to have additional instruction, two of them, that they jury can -- are not permitted to presume or draw any unfavorable inference from the fact that a man has a prior conviction.

71 THE COURT: I think I said that.

MR. TITUS: You did say that.

MR. LICHTENBERG: I wasn't sure.

THE COURT: I think so.

MR. LICHTENBERG: The question of reference of burden of proof, I would like to have you reiterate to the jury that the burden of proof is on the Government to prove every element.

THE COURT: I have already charged --

MR. LICHTENBERG: If they have any doubt as to any particular element, they must resolve that doubt in favor --

THE COURT: I think I have done that.

MR. LICHTENBERG: -- and, of course, we renew our motions and objections and so forth.

THE COURT: They will be denied.

MR. TITUS: In covering the first part of Mr. Lichtenberg's suggestion, you gave your customary and usual charge. I think your instruction covered that.

THE COURT: You mean on prior criminal record?

MR. TITUS: Yes.

THE COURT: Yes, I think so.

(In open Court.)

72 THE COURT: Ladies and gentlemen of the jury, as you know, when you go to the jury room, you select one of your members as foreman, you weigh the evidence carefully and objectively without any prejudices or sympathy, merely as responsible judges of the facts, you have the responsibility, having heard the evidence, to decide the facts under the instructions which I have given you upon the law of the case.

I will now excuse you two alternate members of the jury. You will have no further duty to perform. The members of the jury may retire to the jury room.

* * * * *

BRIEF FOR APPELLEE

United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 13,119

HARRY C. WILLIAMS, APPELLANT,

v.

558

UNITED STATES OF AMERICA, APPELLEE

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR
THE DISTRICT OF COLUMBIA

OLIVER GASCH,

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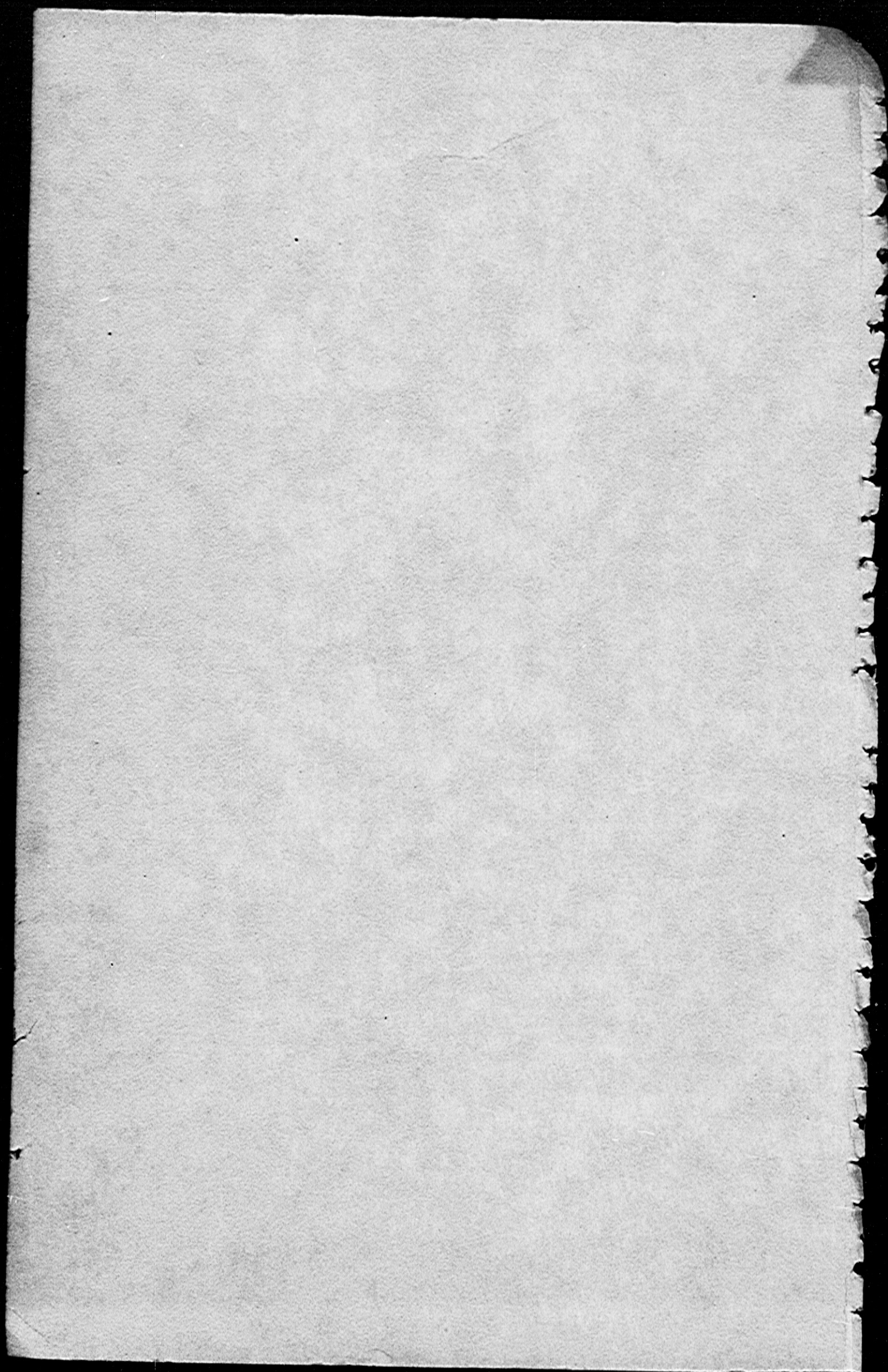
Assistant United States Attorneys.

*United States Court of Appeals
For the
District of Columbia Circuit*

FILED

NOV 28 1958

Joseph W. Stewart
CLERK



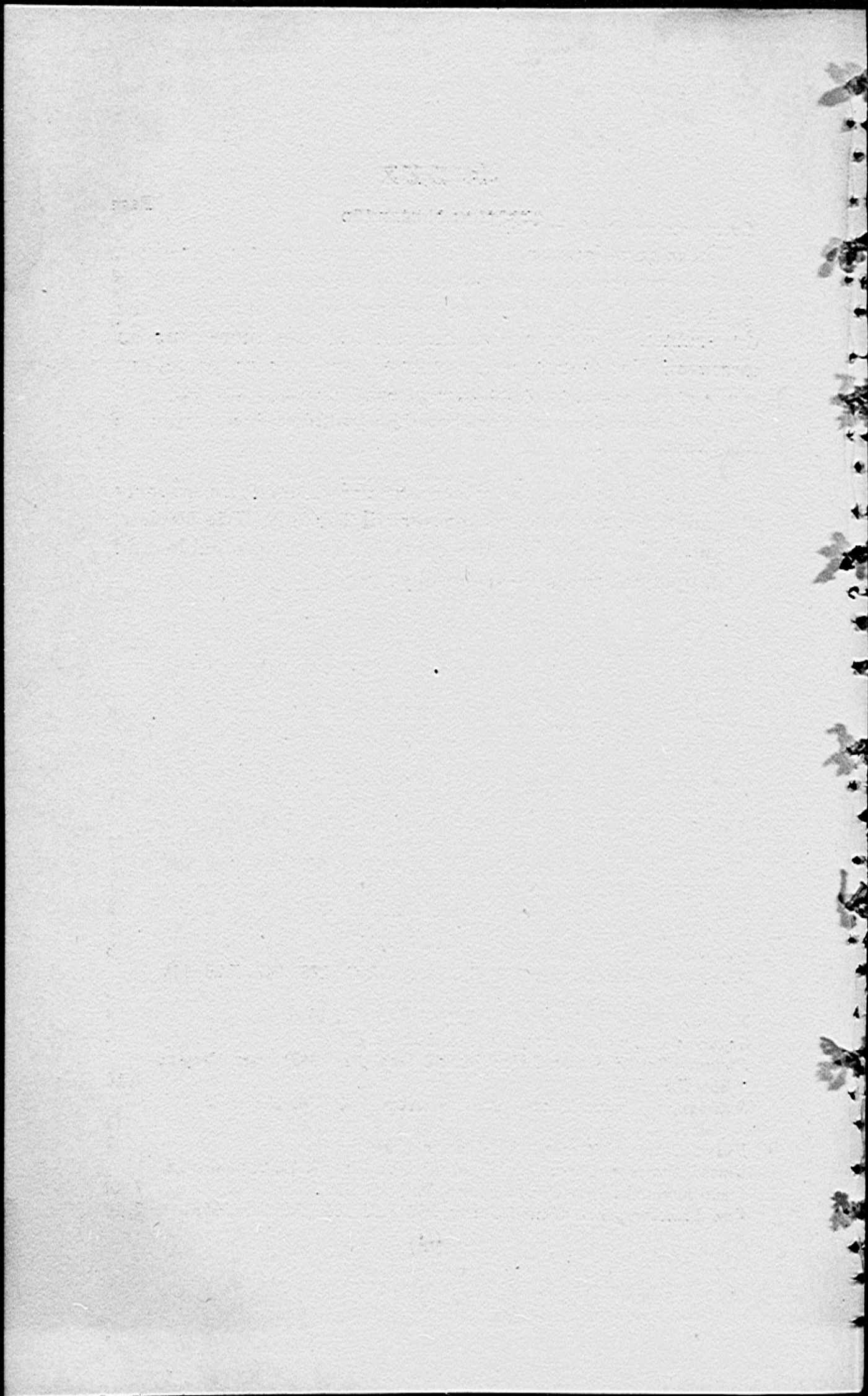
No. 13,119

QUESTION PRESENTED

Where appellant upon his motion to suppress, after given an opportunity to proffer, failed to allege facts amounting to an unreasonable search and seizure and stipulated to the Government proffer which did not indicate there was an unreasonable search and seizure; and where appellant made only a general objection at trial;

In the opinion of appellee the following question is presented:

(1) Whether the issue of the alleged improperly admitted evidence is preserved for appellate review, and if so whether the search was unreasonable and appellant prejudiced thereby?



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United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 13,119

HARRY C. WILLIAMS, APPELLANT,

v.

UNITED STATES OF AMERICA, APPELLEE

*APPEAL FROM THE UNITED STATES DISTRICT COURT FOR
THE DISTRICT OF COLUMBIA*

BRIEF FOR APPELLEE

COUNTERSTATEMENT OF THE CASE

On July 18, 1955, a two-count indictment was filed against appellant in the United States District Court for the District of Columbia. The first count charged appellant, Harry C. Williams, with housebreaking on May 21, 1955, at the home of Samuel M. and Judy Becker, in violation of 22 D.C.C. §1801. The second count charged appellant with larceny committed during the housebreaking alleged in count one, in violation of 22 D.C.C. §§ 2201, 2202. Appellant entered a plea of not guilty on July 22, 1955 (J.A. 1). On December 8, 1955, trial by jury resulted in appellant's conviction as indicted (J.A. 3-4). The court imposed a general sentence of three to ten years imprisonment (J.A. 4). This appeal followed.

A. Motion to Suppress

Following four continuances, appellant filed a motion to suppress on the day of and immediately prior to the *voir dire* at trial (J.A. 2, 7). At a bench conference requested by the Government, the following transpired (J.A. 8):

"The COURT: Is the Government going to use any evidence that it saw?

Mr. TITUS: Yes, sir, only that that it saw.

The COURT: I am not sure that I made my question clear. What is the Government going to use?

Mr. TITUS: The officers went to the home of the defendant, and according to the officers they were admitted to the home went up to the second floor of the house and observed a coat from which a button was missing. They recovered that button at the scene of the crime. Subsequently, the defendant destroyed the coat and admitted to the officers that he had burned it.

The COURT: Do you agree that that is what the evidence will show?

Mr. LICHTENBERG: Yes.

The COURT: It will be shown at a hearing on the motion?

Mr. LICHTENBERG: Yes.

The COURT: I will permit the motion to be filed and will deny it.

Mr. LICHTENBERG: If the court please, that does not preclude us from raising the question during the trial. Under 41(e) we can raise it at any time.

The COURT: I will deal with that when you raise it.

Mr. LICHTENBERG: May the Clerk file this?

The COURT: Yes, sir."

B. Commission of the Crimes

At approximately 4:45 on the morning of May 21, 1955, Dr. Samuel M. Becker of 5713 Sixteenth Street, Northwest, was awakened by a sound at his bedroom doorway which leads to the hall. The doctor sat up, looked towards the door, simultaneously shouted, "Who's there," and saw

appellant in his hallway facing towards the bedroom as appellant appeared to be "backing away from the bedroom door". As the doctor shouted and gave chase, appellant turned in such a manner that the hall light was thrown directly onto his face, at which time the doctor "got a good look" at appellant. (J.A. 10-11, 14.) Bare feet and clad in pajamas, the doctor pursued appellant downstairs through the living-room and den. Upon running from the latter into the back yard, the doctor found no trace of appellant. Thereafter, the doctor heard the "gunning" of an automobile approximately 100 feet away. Upon returning to his home for his car keys in order to pursue the automobile, the doctor discovered that his car keys and two billfolds, one of which contained identification cards and the other approximately one-hundred and thirty dollars "had gone". (J.A. 11-13.) The doctor identified appellant as the housebreaker at police headquarters on May 26, 1955, and also during trial. Upon hearing the accusation at police headquarters, appellant remained silent. (J.A. 13, 18.)

Detective Sergeant Daniel J. Slattery of the Metropolitan Police Department responded to the scene of the crimes and discovered that entry to the doctor's home had been made through the rear door, located on the back porch, which leads into the den on the first floor. Examination of the door near the lock revealed "a little chip in the wood similar to the mark that a screw driver or similar type instrument might make". (J.A. 15-16.) On the back porch the officer found a gray coat button (J.A. 16-17) which was similar to the buttons on a gray suit coat—one of which was missing—which the officer saw about 11:00 A.M. on May 26, 1955, in the hallway closet at appellant's home. The officer was admitted to the home on the latter date by appellant's sister (J.A. 17-18, 20-21).

Following appellant's arrest by other officers on the evening of May 26, 1955, Detective Slattery showed appellant the button recovered from the scene of the crime, and accompanied appellant to his home. The coat previously seen by the officer was not there, but appellant stated he had a gray coat with similar buttons. Later at police headquarters,

appellant stated that he had burned the coat, but when asked why, appellant remained silent. (J.A. 18-19.)

Thereafter, the Government rested its case (J.A. 21, R. 34). Appellant's motion for judgment of acquittal based only upon sufficiency of the evidence as to appellant's identity was denied (R. 34-35).

Upon his direct examination, *appellant* testified, "I've been in trouble for housebreaking before" (J.A. 22). On cross-examination, appellant admitted having been convicted of housebreaking and petty larceny in December, 1941; housebreaking in January, 1943; for violation of the Motor Vehicle Theft Act in July, 1943; and housebreaking in June, 1948.

Further on cross-examination, appellant denied owning a suit with a missing button or that he had told the officer anything to the contrary (J.A. 28). Appellant further testified that on the morning of the housebreaking—perpetrated about 4:45—he had returned to his sister's apartment between twelve and one (J.A. 25) from some place he could not recall (J.A. 27-28). Upon arrival, appellant's mother, two children and sisters, including Maizie Berry, were in bed in the three bedrooms. No conversation was engaged in by anyone, and appellant retired on a couch in the hallway just inside the apartment door (J.A. 26-27).

Thereafter, appellant's sister, Maizie Berry, testified that she admitted Detective Slattery to the apartment, upon the latter's request (J.A. 31-32), and that the officer didn't tell her anything about appellant's coat and she knew nothing about it (J.A. 32), although she permitted the officer to look at appellant's clothes (J.A. 31). On cross-examination Miss Berry testified that all of appellant's clothes were in the hallway closet; that she knew neither the number nor kind of suits (J.A. 33). Thereafter, she admitted the officer had asked her about one of appellant's coats, but the witness didn't recall what was wrong with the coat (J.A. 33). The witness further testified the officer only looked at the coat and said nothing to her, but from the officer she "heard it was a button" (J.A. 34). Upon the conclusion of his sister's testimony, appellant

closed his case without renewing or making any motions (J.A. 35, R. 64). Thereafter, the court charged the jury upon the essential questions of law (R. 64-70).

STATUTES AND RULES INVOLVED

The United States Constitution, Amendment IV provides:

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

Federal Rules of Criminal Procedure, Rule 41(e) provides:

Motion for Return of Property and to Suppress Evidence. A person aggrieved by an unlawful search and seizure may move the district court for the district in which the property was seized for the return of the property and to suppress for use as evidence anything so obtained on the ground that (1) the property was illegally seized without warrant, or (2) the warrant is insufficient on its face, or (3) the property seized is not that described in the warrant, or (4) there was not probable cause for believing the existence of the grounds on which the warrant was issued, or (5) the warrant was illegally executed. The judge shall receive evidence on any issue of fact necessary to the decision of the motion. If the motion is granted the property shall be restored unless otherwise subject to lawful detention and it shall not be admissible in evidence at any hearing or trial. The motion to suppress evidence may also be made in the district where the trial is to be had. The motion shall be made before trial or hearing unless opportunity therefore did not exist or the defendant was not aware of the grounds for the motion, but the court in its discretion may entertain the motion at the trial or hearing.

Title 22, District of Columbia Code (1951 Edition) Section 1801, Definition and penalty, provides:

Whoever shall, either in the night or in the daytime, break and enter, or enter without breaking, any dwelling, bank, store, warehouse, shop, stable, or other building, or any apartment or room, whether at the time occupied or not, or any steamboat, canal boat, vessel, or other watercraft, or railroad car, or any yard where any lumber, coal, or other goods or chattels are deposited and kept for the purpose of trade, with intent to break and carry away any part thereof or any fixture or other thing attached to or connected with the same, or to commit any criminal offense, shall be imprisoned for not more than fifteen years.

Title 22, District of Columbia Code (1951 Edition as Amended, Supp. IV), Section 2201—Grand Larceny provides:

Whoever shall feloniously take and carry away anything of value of the amount or value of \$100 or upward, including things savoring of the realty, shall suffer imprisonment for not less than one nor more than ten years.

SUMMARY OF ARGUMENT

Appellant's failure to allege facts amounting to an unreasonable search and seizure and his stipulation to the Government proffer which did not show an unreasonable search and seizure—during the bench conference concerning his motion to suppress—warranted denial of the motion to suppress evidence. Appellant's failure to make such a motion during trial precludes appellate review of the admissibility of the alleged illegally acquired evidence. Appellant's motion for a new trial and general objection during trial are not sufficient to preserve the issue. Assuming *arguendo*, the issues are properly preserved, consent for entry and search given by the owner of the apartment, appellant's sister, validates the officer's conduct. In any event, no prejudice resulted to appellant from the alleged improperly admitted evidence.

ARGUMENT

I

The Motion to Suppress Was Properly Denied and Evidence Observed Was Properly Admitted at Trial

As referenced in the counterstatement, appellant's motion to suppress filed immediately prior to actual trial, was followed by appellant's stipulation that the evidence on a hearing of the motion would show that officers were *admitted* to appellant's home; that they went to a section of the premises and observed a coat with a missing button; that the button was recovered at the scene of the crime, and that appellant admitted that he had subsequently destroyed the coat.

It is axiomatic that the Fourth Amendment to the Constitution condemns only unreasonable searches and seizures. The circumstances aforementioned, as presented to the trial court and agreed to by appellant, do not depict an unreasonable search and seizure. Rather they spell out that the officer's conduct was authorized. Appellant did not contend otherwise. It is well established that even one under arrest may consent to a search and seizure of his premises. *United States v. Mitchell*, 322 U.S. 65 (1944); *Brainard v. United States*, 95 U.S. App. D.C. 121, 220 F.2d 384 (1955). See also *United States v. Sferas*, 210 F.2d 69, 74 (7th Cir. 1954), *cert. denied, sub nom, Skally v. United States*, 347 U.S. 935. *A fortiori*, one not under arrest may consent to the search of premises under his control. *Von Eichelberger v. United States*, 252 F.2d 184 (9th Cir. 1958). Under such circumstances, the owner's consent validates the search and seizure of the property of another found thereon, when the person whose property was seized had no superior legal right of possession to or dominion over the premises searched. For application of the doctrine see, *United States v. Sferas, supra*; *Calhoun v. United States*, 172 F.2d 457 (5th Cir. 1949), *cert. denied* 337 U.S. 938; *Cutting v. United States*, 169 F.2d 951 (9th Cir. 1948); *Stein v. United States*, 166 F.2d 851 (9th Cir. 1948), *cert. denied*, 334 U.S. 844.

Thus, there is ample authority supporting the trial court's denial of the pre-trial motion to suppress. It is significant that appellant did not proffer evidence of coercion or duress which precludes voluntary consent. Cf. *Rigby v. United States*, 101 U.S.App.D.C. 178, 247 F.2d 584 (1957). Contrary to appellant's contention (Br. 13), the record does not reflect that the trial court denied the motion to suppress only because the Government intended to introduce as evidence mere observations made by the police (J.A. 7-8). That the court did not rule upon the motion until appellant, given an opportunity to proffer, stipulated what would be disclosed upon a hearing of the motion militates against such a contention. The court's denial of the motion to suppress is a ruling that the search was not violative of appellant's constitutional rights, i.e., it was not unreasonable.

It is not amiss to note that although the court informed appellant it would deal with a motion to suppress if made during trial (J.A. 8), appellant made no such motion at any subsequent stage. Cf. *Williams v. United States*, 99 U.S. App. D.C. 161, 237 F.2d 789 (1956). Appellant's subsequent contention in a motion for a new trial (J.A. 5) that the trial court erred in not granting appellant a hearing on the motion to suppress overlooks two principles. Appellant was (1) bound by his stipulation and (2) a belated post-trial motion comes too late. *Segurola v. United States*, 275 U.S. 106 (1927); *Cromer v. United States*, 78 U.S. App. D.C. 400, 142 F.2d 697 (1949); *cert. denied*, 339 U.S. 929. Similarly, appellant's general objection made during trial (J.A. 18) is insufficient to preserve a specific claim such as violation of a constitutional right. See F.R. Cr. P. 51; *On Lee v. United States*, 343 U.S. 747, 749-750 (fn. 3) (1952); *Rocchia v. United States*, 78 F.2d 966, 972 (9th Cir. 1935); *Wigmore on Evidence*, Sec. 18(C)(1). In any event, Rule 52(b) does not require consideration of the specific claim on a general objection. *On Lee v. United States*, *supra*.

Although *Waldron v. United States*, 95 U.S. App. D.C. 67, 219 F.2d 37 (1955), does not require that objection be made at trial to the admissibility of evidence illegally obtained

when a pre-trial motion has been *erroneously* denied, it preserves no record for appellate review except the record made on the hearing of the motion to suppress. Where the record made on the hearing of the motion is barren of an unreasonable search and seizure, because of appellant's stipulation or otherwise, it cannot be said that the trial court erred or that the motion to suppress embraces the trial, when the motion was not renewed at trial.

Assuming, *arguendo*, that the validity of the search and seizure are before the Court to be determined on the record made at trial,¹ rather than on the motion, the record at trial shows that Detective Slattery's entry and search were with the consent of appellant's sister (J.A. 17-18, 20-21, 31, 32)—one who had legal right of possession to or dominion over the premises superior to appellant's (J.A. 25). In this regard, the officer testified that he was admitted as an officer upon his request after appellant's sister informed him that appellant was not at home (J.A. 17, 20-21). Appellant's sister agreed she admitted the officer upon his request (J.A. 31). Appellant's sister further testified that the officer *asked* if he could look at appellant's clothes and that she "just let him come on in and he looked through [appellant's] clothes" (J.A. 31-32). That appellant's sister prefaced her testimony, giving the officer permission to look at appellant's clothes, with "by me not knowing" is not indicative of unlawful entry² or "implied coercion,"³ relied upon by appellant. It is rather the voluntary permission of one under "some extraordinary circumstance, such as ignorance that contraband [or incrimi-

¹ Appellant's testimony at trial does not leave the testimony of the prosecution "unchallenged". Cf. *Williams v. United States*, *supra*. Although appellant admitted living in his sister's apartment (J.A. 25) he denied owning a suit with a button missing or telling Detective Slattery that he had burned such a suit (J.A. 28). Thus, on the one hand appellant contends that his constitutional rights were violated, but denies on the other that such could have happened. Cf. *Accardo v. United States*, 101 U.S. App. D.C. 162, 247 F.2d 568 (1957), cert. denied, 355 U.S. 898.

² *McDonald v. United States*, 335 U.S. 45 (1948).

³ *Amos v. United States*, 255 U.S. 313 (1921).

nating evidence] is present." *Higgins v. United States*, 93 U.S. App. D.C. 340, 341 209 F.2d 819 (1954).

As previously noted when discussing appellant's record made upon the motion to suppress, appellant's sister could consent to the search of her apartment (J.A. 25). *Von Eichelberger v. United States, supra*; *United States v. Sferas supra*; *Calhoun v. United States, supra*; *Cutting v. United States, supra*; *Stein v. United States supra*. The record reflects that she did give her voluntary consent. The following doctrine declared by the United States Circuit Court of Appeals in *United States v. Sferas*, is therefore *apropos* (210 F.2d at 74):

"the rule seems to be well established that where two persons have equal rights to the use or occupation of premises, either may consent to search, and the evidence thus disclosed can be used against either. *Driskill v. United States*, 9 Cir. 281 F. 146; *Stein v. United States*, 9 Cir. 166 F.2d 851; *State v. Cairo*, 74 R.I. 377, 60 A.2d 845; *McGinnis v. Commonwealth*, 208 Ky. 239. 270 S.W. 832, 31 ALR 2d, p. 1086. The defense of unreasonable search and seizure raised . . . must be and is overruled."

Or as otherwise stated by the Ninth Circuit in *Stein v. United States, supra* (166 F.2d at 855):

"The original entry and search being authorized evidence discovered during the search was properly seized and its admission into evidence was proper. *Harris v. United States*, 331 U.S. 145 . . ."

Thus, it is clear that the composite testimony at trial respecting a gray coat seen at the apartment where appellant lived was not the product of an unreasonable search. It was, therefore, admissible in evidence.

Appellant's contention that testimony concerning and admission into evidence of the button found at the scene of the crime (rather than at the apartment of appellant's sister) and appellant's admission at police headquarters that he had burned a coat which contained similar buttons

constitutes error overlooks the fact that there was no objection to such evidence (J.A. 16, 18-19). The issues are not preserved for appellate review. Rule 51, *supra*; *Lawson v. United States*, 101 U.S. App. D.C. 332, 248 F.2d 654 (1957). See also *Gilliam v. United States*, — U.S. App. D.C. —, — F.2d — (decided April 24, 1958), and cases there cited. Moreover, assuming, *arguendo*, an unreasonable search, the officer's testimony of having seen the coat is not *tainted*, because appellant's admission of having destroyed a coat with buttons similar to that found at the scene of the crime and other police work so attenuates the alleged illegal search as to dissipate the taint. Cf. *Nardone v. United States*, 308 U.S. 338, 341 (1939); *Gregory v. United States*, 97 U.S. App. D.C. 305, 231 F.2d 258 (1956); *Sullivan v. United States*, 95 U.S. App. D.C. 78, 219 F.2d 760 (1955).

In view of the foregoing, it is submitted that the alleged improperly admitted evidence had slight, if any effect, on the jury verdict. There was no doubt in the victim's mind that it was appellant who had perpetrated the crimes. Moreover, the alleged "fruit of the poisonous tree" was merely cumulative to the very clear identification of the criminal. It follows that this Court should not take notice of the alleged error. See *Woods v. United States*, 99 U.S. App. D.C. 351, 354, 240 F.2d 37 (1956.)

CONCLUSION

Wherefore, it is respectfully submitted that the judgment of the District Court be affirmed.

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